IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated : 14.03.2019
CORAM:
THE HONOURABLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY
W.P.No.34296 of 2006
and
W.M.P.No.1 of 2006

Grupo Autolin Pune Private Limited,
Represented by its Liaison Officer,
B.Guru,
2, Atrangarai Street,
Velappanchavadi,
Chennai - 600 077. ... Petitioner

Vs.

1.The Deputy Commercial Tax Officer,
Koyambedu Assessment Circle,
426, P.H.Road,
Chennai - 602 102.

2.The Deputy Commissioner (CT),
Chennai (South) Division,
PAPJAM Buildings, II Floor,
Greams Road, Chennai - 600 006.

3.The Joint Commissioner of Commercial Taxes,
(Revision Petition),
Chepauk, Chennai - 600 005. ... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records on the files of the third respondent herein in his R.P.J1/77/05 dated 27.12.2005 and quashing the same, while directing the first respondent herein to accept the declaration and grant exemption in so far it relates to the sales made to M/s.Ford India Limited as per G.O.Ms.No.381/CT and RE dated 15.09.1997.

For Petitioner : Mr.K.Narayanan for Mr.N.Inbarajan

For Respondents: Mr.Mohammed Shaffiq (Taxes)
Special Government Pleader

O R D E R

This Writ Petition has been filed to call for the records on the file of the third Respondent in R.P.J1/77/05 dated

27.12.2005, quash the same and direct the first Respondent to accept the declaration and grant exemption to the Petitioner in so far as it relates to the sales made to M/s.Ford India Limited as per G.O.Ms.No.381/CT and RE dated 15.09.1997.

2. The brief facts of the case are as under:

(i) The Petitioner is a registered dealer in automobile spare parts. In the course of business, the Petitioner effected sale of goods to Ford India Limited, which is a registered dealer under the Tamil Nadu General Sales Tax Act, 1959 (TNGST Act) and such sales are eligible for exemption from payment of taxes as per the notification under G.O.Ms.No.381/CT and RE dated 15.09.1997 (The Exemption Notification) issued under Section 17 of the TNGST Act.

(ii) The Petitioner states that when the assessment was made by the Deputy Commercial Tax Officer, namely the first Respondent herein, the Petitioner was unable to submit the relevant exemption notification and that therefore the assessment was completed by assessing the entire turn over at 12% on the basis that it was the first sale of automobile spare parts. This assessment was completed by Assessment Order dated 18.08.2003. Shortly thereafter, on 11.12.2003, the Petitioner submitted the form of declaration issued by Ford India Limited to the Petitioner wherein it was certified by Ford India Limited that the goods specified in the annexure are used by Ford India Limited as consumables/Packing materials labels/components/parts/raw materials/processing materials of passengers cars and automobiles at its factory. However, the revision petition of the Petitioner was rejected by an order dated 17.03.2004 of the Deputy Commercial Tax Officer, Koyambedu on the ground that there is no error apparent on the face of the record.

(iii) Therefore, the Petitioner was constrained to file a further revision petition before the Deputy Commissioner (Commercial Taxes), Chennai South. This revision petition was disposed of by an order dated 20.10.2004 wherein, at paragraph (7), the Deputy Commissioner has taken the view that the declaration was not filed by the Petitioner even after receipt of the pre-assessment notice and that, therefore, the request for revision under Section 55 of the TNGST Act cannot be entertained and that the order of the assessing officer is not liable to be interfered with.

3. Against this order, a further revision petition was filed before the Joint Commissioner of Commercial Taxes under Section 33 and 35 of the TNGST Act, 1959. Once again, by an order dated 27.02.2005, the Joint Commissioner of Commercial Taxes rejected

the revision petition by observing at paragraph 4 (c) that the Petitioner did not file the declaration even after receipt of the pre-assessment notice and that therefore, the revision petition is liable to be rejected. The said order dated 27.12.2005 is the impugned order in this Writ Petition.

4. At the hearing, the learned counsel for the Petitioner submitted that the declaration was submitted within a reasonable period after the assessment order was issued and that, therefore, the Petitioner's declaration ought to have been considered whereas it was unfairly rejected on a technicality that it was not submitted even after receipt of the pre-assessment notice.

5. The learned counsel for the Petitioner also relied upon the judgment of this Court in W.P.No.18280 of 2004 wherein, by order dated 09.07.2004, this Court set aside the impugned order and directed the sales tax authorities to reopen the assessment and consider the forms submitted by the Petitioner and make a re-assessment. According to the learned counsel for the Petitioner, the Judgment in W.P.No.18280 of 2004 would squarely apply to the instant case.

6. The learned counsel for the Respondents fairly submits that the exemption notification is intended to cover all cases wherein consumables/packing materials labels/raw materials are supplied to Ford India Limited and that the general practice has been to accept forms and declarations that are submitted after the lapse of the stipulated period, subject to verification, if any, as to genuineness.

7. This Court has carefully consider the affidavit, documents and rival submissions of both parties. It is not in dispute that the Petitioner submitted the relevant declaration to avail the benefit of the exemption notification within a period of about four months from the date of assessment. Accordingly, the said declaration could very well have been verified for purposes of ascertaining the genuineness thereof and considered in the revision proceedings. The order of this Court in W.P.No.18280 of 2004 is also applicable to the facts and circumstances of the instant case.

8. Therefore in the interest of justice, this Court quashes the order of the third Respondent and consequently directs the first Respondent to take into consideration the declaration submitted by the Petitioner in respect of the claim for exemption after verifying the genuineness thereof and thereafter complete a fresh assessment, after providing reasonable opportunity to the Petitioner, within a period of four weeks from the date of receipt of a copy of this order. This Writ

Petition is disposed of in the above terms. There shall be no orders as to costs. Consequently, the connected Writ Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

arb

To

1.The Deputy Commercial Tax Officer,
Koyambedu Assessment Circle,
426, P.H.Road,
Chennai - 602 102.

2.The Deputy Commissioner (CT),
Chennai (South) Division,
PAPJAM Buildings, II Floor,
Greams Road, Chennai - 600 006.

3.The Joint Commissioner of Commercial Taxes,
(Revision Petition),
Chepauk, Chennai - 600 005.

+1 cc to The Special Government Pleader, Sr.No.24613
+1 cc to Mr.N.Inbarajan, Advocate Sr.No.24357

W.P.No.34296 of 2006
and W.M.P.No.1 of 2006

CSL/04.04.2019